

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<b>United States District Court</b>		District <del>EASTERN DISTRICT OF MASSACHUSETTS</del>
Name <u>PABLO A. CRUZ</u>	Prisoner No. <u>W-67243</u>	Case No.
Place of Confinement <u>MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK</u>		
Name of Petitioner (include name under which convicted) <u>PABLO A CRUZ</u>		Name of Respondent (authorized person having custody of petitioner) <u>V. LUIS S. SPENCER</u>
The Attorney General of the State of:		

**PETITION**

1. Name and location of court which entered the judgment of conviction under attack PLYMOUTH COUNTY  
SUPERIOR COURT, BOSTON
2. Date of judgment of conviction \_\_\_\_\_
3. Length of sentence FIFTEEN YEARS - TO - FIFTEEN YEARS AND ONE DAY
4. Nature of offense involved (all counts) TRAFFICKING IN COCAINE

## 5. What was your plea? (Check one)

- (a) Not guilty ☒  
 (b) Guilty ☐  
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

## 6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☒  
 (b) Judge only ☐

## 7. Did you testify at the trial?

Yes ☒ No ☐

## 8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

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9. If you did appeal, answer the following:

- (a) Name of court MASSACHUSETTS APPEALS COURT
- (b) Result DENIED
- (c) Date of result and citation, if known 62 MASS. APP. CT. 1109 (NOVEMBER 5, 2004)
- (d) Grounds raised INEFFECTIVE ASSISTANCE OF COUNSEL, MISSING WITNESS AND EVIDENTIARY GROUNDS
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
- (1) Name of court MASSACHUSETTS SUPREME JUDICIAL COURT
- (2) Result PETITION FOR FURTHER APPELLATE REVIEW DENIED  
APPEAL 03-0959
- (3) Date of result and citation, if known COM V CR 2 (12-23-04)
- (4) Grounds raised I.A.C., NEW TRIAL, MISSING WITNESS, POSTTRIAL DISCOVERY  
Certificates of Analysis illegal, RFNG denied
- (f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court \_\_\_\_\_
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court PLYMOUTH COUNTY SUPERIOR COURT
- (2) Nature of proceeding MOTION FOR NEW TRIAL, POSTTRIAL DISCOVERY MOTION
- (3) Grounds raised I.A.C. MISSING WITNESS,

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(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☒

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Supporting FACTS (state briefly without citing cases or law) TRIAL COUNSEL FAILED TO PUT  
FORTH A PROPER DEFENSE BY FAILING TO PROPERLY PREPARE FOR  
TRIAL

B. Ground two: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Supporting FACTS (state briefly without citing cases or law): APPELLATE COUNSEL FAILED TO  
PRESERVE PETITIONER'S RIGHTS BY SEEKING REVIEW FOR THE  
INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

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C. Ground three: POSTTRIAL DISCOVERYSupporting FACTS (state *briefly* without citing cases or law): RECORDS OF EMPLOYMENT  
WOULD SHOW ALIBI DEFENSE WAS VIABLED. Ground four TRIAL JUDGE FAILED TO GIVE MISSING  
WITNESS INSTRUCTIONSupporting FACTS (state *briefly* without citing cases or law):INFORMANT WAS BROUGHT TO COURT BUT NOT  
ALLOWED TO TESTIFY.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL; BELIEVED ISSUE WAS  
INCLUDED AS INHERENT SIXTH AMENDMENT RIGHT TO COUNSEL THROUGH  
FOURTEENTH AMENDMENT

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

(b) At arraignment and plea

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- (c) At trial \_\_\_\_\_  
\_\_\_\_\_  
(d) At sentencing \_\_\_\_\_  
\_\_\_\_\_  
(e) On appeal \_\_\_\_\_  
\_\_\_\_\_  
(f) In any post-conviction proceeding \_\_\_\_\_  
\_\_\_\_\_  
(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_  
\_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_  
\_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_  
\_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

1-11-05  
(date)

Pablo Cruz  
Signature of Petitioner